

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

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BDO USA, LLP,

Plaintiff,

Civil Action No.
1:20-cv-06168-JPO

v.

MATTHEW FRANZ and DONALD SOWELL,

Defendants.

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Defendants, MATTHEW FRANZ and DONALD SOWELL, by their attorneys, the
PHILBIN LAW FIRM, PLLC, as and for an Answer to plaintiff's complaint, allege as follows:

INTRODUCTION

1. Defendants deny each and every allegation set forth in paragraphs '1', '2', '3',
'4', '5', and '6' of plaintiff's Complaint.

PARTIES

2. Defendants deny knowledge or information sufficient to form a belief as to the
truth of the allegations contained in paragraph '7' of plaintiff's Complaint.

3. Defendants deny the allegations contained in paragraph '8' of plaintiff's
Complaint except admits that Franz was and is a citizen of the State of Washington and a former
employee of BDO.

4. Defendants deny the allegations contained in paragraph '9' of plaintiff's
Complaint except admits that Sowell was and is a citizen of the State of Texas and a former
employee of BDO.

JURISDICTION AND VENUE

5. Defendants deny in the form alleged and refer all questions of law to the court as to the allegations contained in paragraph '10' of plaintiff's Complaint.

FACTS

A. BDO's Industry Specialized Services consulting practice

6. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs '11', '12', '13', '14', and '15' of plaintiff's Complaint.

B. The Manager Agreements with Franz and Sowell

7. Defendants deny each and every allegation set forth in paragraphs '16', '17', '18', '19', '21', '22', '23', '32', '36', and '37' of plaintiff's Complaint.

8. Defendants deny each and every allegation set forth in paragraph '33' of plaintiff's Complaint and refer all questions of law to the Court.

9. Defendants deny each and every allegation set forth in paragraphs '20', '24', '25', '26', '27', '28', '29', '30', '31', '34', and '35' of plaintiff's Complaint and respectfully refers all contractual provisions to the document itself.

C. Franz's and Sowell's obtaining, developing, and misusing BDO Confidential Information and BDO Work Product

10. Defendants deny each and every allegation set forth in paragraphs '39', '42', '43', '44', '46', '47', '48' and '49' of plaintiff's Complaint.

11. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs '40' and '41' of plaintiff's Complaint.

12. Defendants deny each and every allegation set forth in paragraph '45' except admit that defendant Sowell purchased Lenovo ThinkPad computers.

D. BDO Confidential Information and BDO Work Product fall into the hands of Jia-Sobota and Everglade

13. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ‘50’, ‘51’, ‘52’, ‘53’, ‘54’, ‘55’, ‘56’, ‘57’, ‘58’, ‘59’, ‘60’, ‘61’, ‘62’ of plaintiff’s Complaint.

14. Defendants deny each and every allegation set forth in paragraph ‘63’ of plaintiff’s Complaint, except admits that defendants responded to public invitations to apply for employment opportunities published on social media and Everglade’s website.

E. While employed at BDO, Franz and Sowell pursue personal consulting business in competition with BDO

15. Defendants deny each and every allegation set forth in paragraphs ‘64’ and ‘67’ of plaintiff’s Complaint.

16. Defendants admit to the allegations contained in paragraphs ‘65’ and ‘66’ of plaintiff’s Complaint.

F. Franz’s and Sowell’s resignations

17. Defendants admit to the allegations contained in paragraph ‘68’ and ‘69’ of plaintiff’s Complaint.

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION
(Breach of Contract)
DESIGNATED IN COMPLAINT AS “FIRST COUNT”**

18. Defendants repeat, reiterate and reallege each and every response previously set forth above with the same force and effect as if fully set forth herein.

19. Defendants deny each and every allegation set forth in paragraphs ‘71’, ‘73’, ‘74’, ‘75’ and ‘76’ of plaintiff’s Complaint.

20. Deny each and every allegation set forth in paragraph '72' of plaintiff's Complaint and respectfully refer all questions of law to the Court.

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)
DESIGNATED IN COMPLAINT AS "SECOND COUNT"**

21. Defendants repeat, reiterate and reallege each and every response previously set forth above with the same force and effect as if fully set forth herein.

22. Defendants deny each and every allegation set forth in paragraphs '78' and '79' of plaintiff's Complaint and respectfully refer all questions of law to the Court

23. Defendants deny each and every allegation set forth in paragraph '80' of plaintiff's Complaint.

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION
(Breach of Duty of Good Faith and Fair Dealing)
DESIGNATED IN COMPLAINT AS "THIRD COUNT"**

24. Defendants repeat, reiterate and reallege each and every response previously set forth above with the same force and effect as if fully set forth herein.

25. Defendants deny each and every allegation set forth in paragraph '82' of plaintiff's Complaint and respectfully refer all questions of law to the Court.

26. Defendants deny each and every allegation set forth in paragraphs '83', '84' and '85' of plaintiff's Complaint.

**AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION
(Faithless Servant)
DESIGNATED IN COMPLAINT AS "FOURTH COUNT"**

27. Defendants repeat, reiterate and reallege each and every response previously set forth above with the same force and effect as if fully set forth herein.

28. Defendants deny each and every allegation set forth in paragraph '87' of plaintiff's Complaint and respectfully refer all questions of law to the Court.

29. Defendants deny each and every allegation set forth in paragraphs '88', '89', '90' and '91' of plaintiff's Complaint.

**AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF ACTION
(Unjust Enrichment)
DESIGNATED IN COMPLAINT AS "FIFTH COUNT"**

30. Defendants repeat, reiterate and reallege each and every response previously set forth above with the same force and effect as if fully set forth herein.

31. Defendants deny each and every allegation set forth in paragraphs '93' and '94' of plaintiff's Complaint.

32. Defendants deny each and every allegation set forth in paragraph '95' of plaintiff's Complaint and respectfully refer all questions of law to the Court.

AS AND FOR A FIRST, SEPARATE AND COMPLETE DEFENSE

33. Defendants specifically deny the amount of damages alleged in plaintiff's Complaint.

AFFIRMATIVE DEFENSES

34. Without altering the burden of proof, Defendants asserts the defenses set forth below. These affirmative defenses are based upon information currently available to Defendants, who do not waive their rights to assert additional defenses based on information revealed during discovery or otherwise.

FIRST AFFIRMATIVE DEFENSE

35. The Complaint fails to state a claim against Defendants upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

36. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, ratification, and estoppel.

THIRD AFFIRMATIVE DEFENSE

37. Plaintiff has suffered no damages and/or has failed to mitigate its damages, if any.

FOURTH AFFIRMATIVE DEFENSE

38. Plaintiff's claims are barred by Plaintiff's own conduct and by the doctrine of unclean hands.

WHEREFORE, these answering Defendants, MATTHEW FRANZ and DONALD SOWELL, demand judgment dismissing the Plaintiff's complaint herein, and for such other, further, and different relief as to the Court seems just and proper.

Dated: New York, New York
August 11, 2020

Yours, etc.

PHILBIN LAW FIRM, PLLC

By: /s/ James Philbin

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